RECENT CASES

ADMIRALTY — EFFECT OF PAYMENT IN FULL BY AN ENEMY UNDERWRITER ON A PRIOR SEIZURE OF NEUTRAL GOODS. — Goods belonging to a neutral, but insured by German underwriters, were seized by Great Britain. The underwriters paid the owners in full as for a constructive total loss, and now claim the goods or proceeds in the name of the neutral shipper. *Held*, that the proceeds be condemned as enemy property. *The Palm Branch*, [1916] P. 230.

The original seizure was unjustifiable, for the goods were owned by a neutral. Yet the inevitable result of such seizure was the change to ownership by the belligerent underwriters. For the capture of goods insured against war risks is a *primâ facie* constructive total loss giving the owner the right to abandon. See *Peele* v. *Merchants Insurance Co.*, 3 Mason (U. S. C. C.) 27, 52, 65. See 6 EDW. 7, c. 41, § 60, sub-sec. 2 (Marine Insurance Act.) And the underwriter is liable whether the capture is lawful or unlawful. *Goss* v. *Withers*, 2 Burr. 683, 695. An abandonment by the owner has two results: the insurer is entitled to take over the interest of the assured in whatever may remain of the property, and the insurer is subrogated to all the rights and remedies of the assured as from the time of the casualty causing the loss. See *Stewart* v. *Greenock Ins. Co.*, 2 H. L. Cas. 159. See 6 EDW. 7, c. 41, § 79. Neither of these effects would seem to validate the original seizure. Subrogation in the present case should give the underwriters a perfect claim, although the court might well refuse to entertain their suit, *pendente bello*, because of their enemy citizenship. *Cf.* 28 HARV. L. REV. 312. And the underwriters' assumption of the shipper's title *because* of the capture could not retroactively justify the capture. Nor could a new seizure of goods or proceeds after the goods had been landed and sold be condoned in the face of the generally understood principle of international law that enemy goods in a belligerent country will not be confiscated. WESTLAKE, INTERNATIONAL LAW, Part II, 42. According to the rule in the present case, it would result that enemy-insured goods are as liable to confiscation as enemy-owned goods.

AGENCY — RESPONSIBILITY OF EMPLOYER FOR ASSAULT BY EMPLOYEE — RELATIONAL DUTY. — An employee of a corporation which held itself out to diagnose, treat and furnish appliances for defective feet and limbs, feloniously assaulted the plaintiff during the course of a private examination made after the corporation had agreed to take the plaintiff's case. The plaintiff sues the corporation. *Held*, that she may recover. *Stone* v. *Eisen Co.*, 219 N. Y. 205.

The theory of the plaintiff's complaint is tort. The court, however, granted a recovery on the basis of a breach of an implied term in the contract that the plaintiff shall be treated courteously. Undoubtedly, it is in accordance with the purposes of code procedure to allow a recovery if warranted on any theory of the facts. *Bruheim* v. *Stratton*, 145 Wis. 271; *Cockrell* v. *Henderson*, 81 Kan. 335, 105 Pac. 443; *Connor* v. *Philo*, 117 App. Div. 349, 102 N. Y. Supp. 427. But see *Barnes* v. *Quigley*, 59 N. Y. 265. But as a matter of substantive law the implication of such a term in the contract is pure fiction. The true basis of the decision must be found elsewhere. As the court seems to have recognized, it cannot be founded on pure agency doctrines. For acts which constitute an assault are, as a rule, outside the scope of a servant's employment and do not bind the master. *Hardeman* v. *Williams*, 150 Ala. 415, 43 So. 726. MECHEM, AGENCY, 2 ed., § 1977. But railroads, and according to some cases, innkeepers, themselves without fault, are held responsible for assaults by employees on passengers and guests. *Craker* v. *Chicago, etc. R.*, 36 Wis. 657; *Stewart* v. *Brooklyn, etc. R.*, 90 N. Y. 588; *Chicago, etc. R.* v. *Flexman*, 103 Ill. 546; *Goddard* v. *Grand Trunk Ry.*, 57 Me. 202; *Stanley* v. *Bircher's*